(16,076)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 367.

GEORGE P. WETMORE ET AL., PLAINTIFFS IN ERROR,

vs.

DAVID RYMER, SAM. RYMER, TOM PAYNE, AND W. CAL. McCONNELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Caption	1	1
Declaration	2	1
Cost bond	4	2
Pleas	6	3
Replication	7	4
Verdict and judgment	8	4
Bill of exceptions	11	5
Statement of evidence, &c	11	5
Disclaimer and plea in case of Stevenson *vs.* Rymer	12	6
Lease to Rymer, April 1, 1886	14	7
Testimony of Oscar W. Muller	14	7
Affidavit of Charles Seymour	16	8
I. B. Brock	17	9
O. W. Miller	18	9
Diagram attached to affidavit of Miller	19	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 18, 1896.

	Original.	Print.
Objections to affidavits	19	10
Ruling on motion to dismiss	20	11
Judge's certificate to bill of exceptions	20	11
Petition for writ of error	21	11
Assignment of errors	22	12
Bond on writ of error	23	13
Writ of error	26	14
Citation	28	15
Acceptance of service of citation	28½	15
Clerk's certificate	29	15

1 THE UNITED STATES OF AMERICA, } ss:
Southern Division of the Eastern District of Tennessee,

Be it remembered that at a circuit court of the United States began and held for the southern division of the eastern district of Tennessee, at the Federal building, in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 1st day of April, A. D. 1895—present and presiding, the Honorable Chas. D. Clark, district judge for the eastern and middle districts of Tennessee—among the proceedings had were the following, to wit:

GEORGE PEABODY WETMORE, V. K. STEVENSON, MATILDA C. ALLOWAY, HUGH STEVENSON, PAUL E. STEVENSON, ELOISE STEVENSON KERNOCHAN, and JAMES L. KERNOCHAN, Her Husband; MAXWELL STEVENSON, a Minor, Who Sues by His Next Friend, PAUL E. STEVENSON, Plaintiffs,
vs.
DAVID RYMER, SAM. RYMER, TOM PAYNE, W. CAL. MCCONNELL, Defendants. } No. 419.

Be it remembered that heretofore, to wit, on the 3rd day of October, A. D. 1891, came the plaintiffs, by their attorneys, and filed in the clerk's office of said court a certain declaration and cost
2 bond; which said declaration and cost bond are clothed in the words and figures following, to wit:

Declaration and Cost Bond.

The plaintiffs, George Peabody Wetmore, who is a citizen of the State of Rhode Island; Matilda C. Alloway, a citizen and resident of the State of Pennsylvania; V. K. Stevenson, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson Kernochan, and James L. Kernochan, her husband, and Maxwell Stevenson, by Paul E. Stevenson, his next friend, all of whom are citizens and residents of the State of New York, sue the defendants, David Rymer, Sam. Rymer, Tom Payne, and W. Calvin McConnell, all of whom are citizens and residents of Polk county, Tennessee, to recover the following-described lands, situate in the county of Polk, in the southern division of the eastern district of Tennessee, to wit:

In town. one, range three east, of the basis line, Ocoee district.

The south half of section one, the south half of section two, the northwest quarter of section eleven, all of section twelve, the southwest quarter of section thirteen.

In town. two, range four east, of the basis line, Ocoee district.

All of sections one and two and three and five and eight and nine and ten and eleven and twelve and thirteen and fourteen and fifteen and seventeen and twenty and twenty-one and twenty-two and twenty-three and twenty-four and twenty-five and twenty-
3 six and twenty-seven and twenty-eight and thirty-three and thirty-four and thirty-five, the north half and the southeast quarter of section six, the east half of section seven, the east half of section eighteen, the east half and the northwest quarter of section nineteen, the north half and the southeast quarter of section twenty-nine, the east half of section thirty-two, the west half of the west half of section thirty-six.

In town. one, range four east, of the basis line, Ocoee district.

All of sections thirty-one and thirty-five and thirty-six, the west half of section thirty-four.

As shown on the general plan of the Ocoee district of the State of Tennessee, to which and the grants for said land reference is made for full description.

Which lands are worth more than two thousand dollars and of which lands said plaintiffs were possessed, claiming in fee, before the commencement of this suit, and after said possession accrued the said defendants, on the first day of January, 1892, entered thereupon and unlawfully withhold and detain the same, together with one thousand dollars due for the detention thereof.

CHARLES SEYMOUR,
Attorney for Plaintiffs.

4 Know all men by these presents that we, George Peabody Wetmore, V. K. Stevenson, Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson Kernochan, James L. Kernochan, Maxwell Stevenson, by his next friend, Paul E. Stevenson, as principals, and Charles Seymour, as surety, are held and firmly bound unto David Rymer, Sam. Rymer, Tom Payne, W. Cal. McConnell in the penal sum of two hundred and fifty dollars; to the payment whereof we bind ourselves and each of us and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the 3rd day of January, 1894.

The condition of this bond is such that the said G. P. Wetmore, V. K. Stevenson, *et al.* commenced suit against D. Rymer, S. Rymer, T. Payne, and W. C. McConnell for land in ejectment.

Now, if the said Wetmore, Stevenson, *et al.* shall prosecute said suit with effect, or on failure thereof pay and satisfy all costs that may be adjudged against said plaintiffs in said cause, or on failure of said defendants, if convicted, to pay and satisfy said costs, if the

said plaintiffs shall pay the same, this bond to be void; otherwise to remain in full force and virtue.

Attest: GEORGE PEABODY WETMORE, [SEAL.]
V. K. STEVENSON, [SEAL.]
MATILDA C. ALLOWAY, [SEAL.]
HUGH STEVENSON, [SEAL.]
PAUL E. STEVENSON, [SEAL.]
ELOISE STEVENSON KERNOCHAN, [SEAL.]
5 JAMES L. KERNOCHAN, [SEAL.]
PAUL E. STEVENSON,
As Next Friend of Maxwell Stevenson, [SEAL.]
By CHARLES SEYMOUR, *Their Attorney.*
CHARLES SEYMOUR. [SEAL.]

Endorsed: Filed Feb. 23, 1894. Henry O. Ewing, deputy clerk.

6 And afterwards, to wit, on the 30th day of August, 1894, came the defendants, by their attorneys, and filed in the clerk's office of said court a certain plea; which said plea is in the words and figures following, to wit:

Plea.

And now comes the defendant David Rymer and for plea to plaintiffs' declaration says that he is not in possession of and does not claim and has not entered upon or been in possession of or claimed any part of the lands in said declaration described except the following-described lands, to wit: The southwest ¼ of section 17, the north ½ of section 20, the east ½ and southwest ¼ of section 18, and the northeast ¼ of section 19, all in township 2, range 4 east, of the basis line, Ocoee district, Tennessee; and as to all the lands except those herein described this defendant here and now disclaims any and all interest, right, or title.

And for further plea in this behalf said defendant says that as to the said southwest ¼ of section 17, the north ½ of section 20, the east ½ and southwest ¼ of section 18, and the northeast ¼ of section 19, all in township 2, range 4 east, of the basis line, Ocoee district, Polk county, Tennessee, he is not guilty in manner and form as the plaintiffs in their said declaration have alleged; and of this puts himself upon the country.

PRITCHARD, SIZER & BIBLE, *For Rymer.*

And the plaintiff- do the like.

CHARLES SEYMOUR, *Att'y.*

7 And for further plea said defendant says he has had, by himself and through those — whom he claims, seven years' adverse possession of the land- hereinbefore described, which have been granted by the State of Tennessee, holding the same by grants, conveyances, and other assurances of title purporting to convey an estate in fee, without any claim by action at law or suit in equity

commenced within that time and effectually prosecuted against him; and this he is ready to verify.

And for further plea in this behalf said defendant says that the plaintiffs have neglected for the said term of seven years to avail themselves of any title, legal or equitable, by action at law or suit in equity effectually prosecuted against the person in possession of the land hereinbefore described, and that the plaintiffs' right of action, if any they have, accrued more than seven years before the commencement of this suit; and this the defendant is ready to verify.

PRITCHARD, SIZER & BIBLE, *For Rymer.*

For replication to this plea the plaintiffs deny that the defendants are entitled to the benefit of the statute of limitations, and say that the right of action accrued within the period of seven years before the commencement of this suit; and of this they put themselves upon the country.

CHARLES SEYMOUR, *Att'y.*

Endorsed: Filed 30th day of Aug., 1894. Henry O. Ewing, deputy clerk.

8 And afterwards, to wit, on the 12th day of March, A. D. 1895, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

Journal "D," p. 670.

Came the parties, by their attorneys, and came also a jury of good and lawful men, to wit:

James Payne, W. N. Hoge, F. P. Kelly, R. A. McClelland, A. W. Wilbur, Rob't Hambright, W. S. Edwards, W. S. Buckner, W. J. Austin, J. J Lowery, and Geo. Faulkner, who being duly elected, tried, and sworn to try the issues joined, and the evidence of the plaintiff- being closed, the defendant-, by attorney, moved the court to dismiss the plaintiffs' suit for want of jurisdiction, because it appears from the plaintiffs' own testimony that the matter in dispute does not exceed, exclusive of interest and costs, the sum or value of two thousand dollars; but the court suspended action on said motion until the verdict of the jury should be rendered, and the defendant thereafter proceeded to introduce *his* evidence.

And the evidence all being heard and argument of counsel thereon, and the jury having received the charge of the court, upon their oath do say that they find the issues in favor of the plaintiff and assess their damage for the detention of the premises at one dollar.

It is therefore considered by the court that the plaintiffs, G. P. Wetmore and the Stevenson heirs, recover of the defendants the premises set out in the declaration, to wit:

In town. one, range four east, of the basis line, Ocoee district.

9 All of sections one and two and three and five and eight and nine and ten and eleven and twelve and thirteen and fourteen and fifteen and seventeen and twenty and twenty-one and twenty-two and twenty-three and twenty-four and twenty-five and twenty-six and twenty-seven and twenty-eight and thirty-three and thirty-four and thirty-five, the north half and the southeast quarter of section six, the east half of section seven, the east half of section eighteen, the east half and the northwest quarter of section nineteen, the north half and the southeast quarter of section twenty-nine, the east half of section thirty-two, the west half of the west half of section thirty-six.

In town. one, range four east, of the basis line, Ocoee district.

All of sections thirty-one and thirty-five and thirty-six, the west half of section thirty-four, together with said sum of one dollar, assessed as damages, and the costs of this suit, and writ of possession and execution are awarded accordingly.

But immediately upon the rendition of said verdict and judgment the court set them aside and sustained the defendants' motion to dismiss for want of jurisdiction, being of the opinion there is and was not at the commencement of this suit a substantial controversy between the plaintiffs and defendants involving as much as two thousand dollars.

It is therefore considered by the court that said verdict and judgment be, and the same are hereby, vacated and set aside and for nothing held, and that the plaintiffs and the sureties on their prosecution bond pay the costs of this suit, for which execution may issue.

10 To the action of the court in setting aside said verdict and judgment and dismissing said suit the plaintiffs except.

(Endorsed:) Ent., Journal "D," p. 670. Filed 12th day of Mar., 1895. Henry O. Ewing, deputy clerk.

11 And afterwards, to wit, on the 25th day of May, 1895, a certain bill of exceptions was filed in the clerk's office of said court; which said bill of exceptions is clothed in the words and figures following, to wit:

Bill of Exceptions.

This action of ejectment was tried before Judge Clark and a jury, at Chattanooga, Tennessee, on April 12, 1895.

Verdict and judgment were rendered for the plaintiffs, but before the verdict was rendered a motion to dismiss the suit was made for want of jurisdiction, and the court, after verdict and judgment, sustained the motion and set aside the verdict and judgment, dismissed the suit, and taxed the costs against the plaintiffs and sureties on their prosecution bond.

There was evidence tending to show that the plaintiffs had a perfect title to all the lands described in their declaration; the evidence on behalf of the defendant Rymer tended to show adverse possession for more than seven years' under color of title, of the lands claimed by him in his pleas. It is conceded that the charge of the court was correct, and that there was evidence sufficient to support the verdict and judgment if the court had jurisdiction, and the only question presented on appeal is the question of jurisdiction.

After the declaration and the plea had been read the counsel for defendant Rymer then stated to the court that he relied upon
12 the want of jurisdiction as a complete defense to the suit, because the matter in dispute, exclusive of interest and costs, was less than two thousand dollars. Counsel for the plaintiffs insisted that the question whether the court had jurisdiction, based on the insufficiency of the value of the matter in dispute, could only be presented by plea, and that as no plea had been filed the statement of the declaration as to the value of the matter in dispute controlled.

Plaintiff- *was* allowed to amend *his* declaration so as to state the citizenship, instead of the residence, of the parties.

It appeared in the plaintiffs' evidence that on the 12th day of March, 1877, they brought an action of ejectment in the United States circuit court for the northern division of the eastern district of Tennessee, including therein the same land now claimed by the defendant David Rymer; that on the 10th day of July, 1877, the defendant Rymer then filed therein a plea and disclaimer in the following words and figures:

Defendant's Disclaimer and Plea.

Circuit Court of the United States, Eastern District of Tennessee, July Term, 1877.

V. K. STEVENSON *et al.*
vs.
DAVID RYMER.

And now comes the defendant, David Rymer, by att'y, and disclaims title to all the lands sued for, described in the plaintiffs' declaration, except the northeast and southeast quarters of section 18 and the northeast quarter of section 19 and the northwest quarter of section 17, and as — the foregoing four quarters of land excepted from the foregoing disclaimed said def't for plea says that he is not guilty, in manner and form as the plaintiff *has*
13 alleged, of unlawfully withholding the same or any part or parcel of said lands from the plaintiff-; and of this the defendant puts himself upon the country.

BAXTER & SON,
Att'y- for Def't.

Endorsed: No. 634. V. K. Stevenson *et al. vs.* David Rymer. Defendant's disclaimer and plea. Filed July 10, 1877. H. M. Aiken, clerk.

On the 23rd day of July, 1881, verdict and judgment were rendered for the plaintiffs in said ejectment suit for all the lands described in their said declaration in said suit, including the lands described in the plea and disclaimer of the defendant Rymer.

It further appeared in the plaintiffs' evidence that on the 19th day of October, 1885, the present defendant, David Rymer, filed his original injunction bill in the chancery court at Benton, Polk county, Tenn., against G. P. Wetmore *et als.*, alleging therein that he was the owner of the northeast and southwest quarter- of section 17, the northeast quarter of section 19, and the northwest quarter of section 21, all in township two, range four east, of the basis line in the Ocoee district, in Polk county, Tennessee, seeking by said bill to set aside said judgment in said ejectment suit hereinbefore mentioned. Subsequently said suit in equity was removed on the petition of Geo. P. Wetmore to the circuit court of the United States for the northern division of the eastern district of Tennessee, and on October 16, 1886, said suit was dismissed on demurrer.

It further appeared in the plaintiffs' evidence that on the 1st day of April, 1886, a lease contract was entered into between the
14 plaintiffs, by their agent, Charles Seymour, and the defendant David Rymer in the following words and figures:

This contract made this 1st day of April, 1886, witnesseth: That G. P. Wetmore and V. K. Stevenson heirs have let and leased for the farming year of 1886 to David Rymer, and the said David Rymer, releasing all claims, takes as tenant to hold for and under said Wetmore and Stevenson, the following-described land in Polk county, Tennessee, Ocoee District survey: being the east half of section 18 and the north half of the southeast quarter of section 19 of township 2, range 4, east of said district, including where said Rymer lives. Said tenant agrees to pay one dollar a year rent, to cut no timber, except what is necessary for building and fences on the farm and not to sublet any part of the premises nor assign this lease without consent in writing of the lessor. This lease is to run on by the year unless notice is given before Christmas.

DAVID RYMER.
G. P. WETMORE AND HEIRS OF
V. K. STEVENSON,
By CHARLES SEYMOUR, *Att'y.*

Attest:
O. W. MULLER.
JOHN ROBERTS.

The plaintiffs only introduced one witness, Oscar W. Muller, a surveyor, who had surveyed the lands for the plaintiffs and who was one of the attesting witnesses to the lease. He, on cross-
15 examination by defendant's attorney, testified that the market value of the land was fifty cents per acre; that it was

wild or mountain land, and not worth more than that unless its prospective value was to be considered, and that the land described in the plea of the defendant Rymer was not worth $1,000.

The evidence tended to show that the defendant Rymer actually occupied some part of the land covered by his assurance of title, namely, a grant from the State of Tennessee, dated December 21, 1870, from the time he took possession in 1867, before the grant actually issued, to the present time; that he lived on the land and had some of it enclosed and in cultivation all the time.

There was no evidence to show that David Rymer ever claimed any more land than that now claimed by him in his plea in this cause, and it appeared in the evidence that his codefendants, Sam. Rymer, Tom Payne, and W. Cal. McConnell, were the tenants of the said David Rymer of land claimed by him in his said plea, and claimed no land except as such tenants.

This was all the evidence affecting the question of jurisdiction. At the conclusion of this and other evidence the defendant Rymer testifying, the defendant Rymer, by his counsel, moved to dismiss the suit because it appeared that the matter in dispute was of less value than $2,000, and that the suit for the large body of lands described in the declaration was colorable merely, and that there never had been a substantial controversy in which the matter in dispute exceeded the value of $2,000, and that it was so known to the plaintiffs at the time of bringing this suit.

The court announced that the verdict of the jury would be taken, and that the question of jurisdiction would then be passed upon, and that if the court should be of opinion that the court had
16 no jurisdiction the verdict would be set aside.

The defendant Rymer then introduced his proof.

The court charged the jury and a verdict was returned in favor of the plaintiffs, and the court pronounced judgment thereon.

Argument of counsel upon the question of jurisdiction was then heard, and the court gave leave to both parties to file affidavits showing the value of the lands in controversy between the plaintiffs and the defendant Rymer, until nine o'clock the next day. On the next day, to wit, April 13th, 1895, the plaintiffs' counsel produced and read to the court the following affidavits:

Affidavit of Charles Seymour.

In this cause, on leave of the court to file affidavits in respect to jurisdiction, comes Charles Seymour, who, having been duly sworn, declares on oath that he is the attorney and has been for twenty-five years the agent of what are known as the Wetmore and Stevenson lands, in Polk county, Tennessee, and that he is familiar with most of the lands and has been on the lands in dispute in this cause, and that the lands set out in the plea of the defendant lie on Lost creek and Little Lost creek and form a connecting way to many thousands of acres of land of the plaintiffs, which lie in that vicinity, and that the lands described in this plea are worth more than $2,000 on account of their location, and are not to be judged

by the general price for mountain land in the vicinity; that these lands lie near the foot of the Frog mountain, on the northwesterly side, where the timber is more than usually heavy and unusually valuable, both for accessibility and quality.

CHARLES SEYMOUR.

17 Subscribed and sworn to before me this 12th day of April, 1895.

JOHN B. PETTIS,
Dep. C., Dist. Ct.

(Endorsed:) Filed 12 day of April, 1895. Henry O. Ewing, deputy clerk.

Affidavit — I. B. Brock.

In this cause, on leave of the court to file affidavits in respect to jurisdiction, comes I. B. Brock, who, having been duly sworn, testifies as follows: I have lived in Polk county over forty years; was sheriff for six years and have herded cattle for about twenty-five years on and in vicinity of lands set out in defendant's plea, and I know the location of some twenty thousand acres lying near by, understood to be the property of Wetmore and Stevenson heirs, the plaintiffs in this suit; the lands described in the plea are worth much more than the ordinary mountain lands. I sold a quarter section of 160 acres lying a mile from the lands in the plea for $400.00, and the lands described in the plea are near the foot of the mountain, where the timber is better than on most of the mountain, and the way they lie, if I owned the Wetmore and Stevenson lands, I would not want to sell at all, as they are a part of a large boundary that would be needed for shelter for cattle off the mountain and for roadways, and control of the ways to the herding grounds or timber- work, or if mining be done would be in the way.

Not long before Dave Rymer took the lease in 1886 from Wetmore and Stevenson he offered to make me a deed for some
18 land a mile and a half from any land in his present plea in this suit.

I. B. BROCK.

Sworn to and subscribed before me this April 12th, 1895.

JOHN B. PETTIS,
Dep. Cl'k Dis. Ct.

(Endorsed:) Filed 12 day of Apr., 1895. Henry O. Ewing, deputy clerk.

Affidavit of O. W. Miller.

In this cause, on leave of the court to file affidavits in respect to jurisdiction, comes O. W. Miller, who, having been duly sworn, declares on oath that he has been county surveyor for Polk county, Tenn., for a number of years, and has surveyed the lands in dispute in this cause, and also surrounding lands. While I value the

mountain land as a whole at fifty cents per acre, the land in litigation, lying on the waters of Lost creek and Little Lost creek at the foot of the mountain, forms part of a connected body of land of about twenty-five thousand acres, and forms a gateway and outlet to this body for timber and stock to the Hiwassee river and railroad, without which the rest of the body would be materially reduced in value, say from 10 to 20 cents per acre. To cut this off and permanently block this approach would reduce the value of the whole from two to four thousand dollars.

A plat or sketch is attached showing the lands belonging to complainants in the 2 township of range 4 E., Ocoee district.

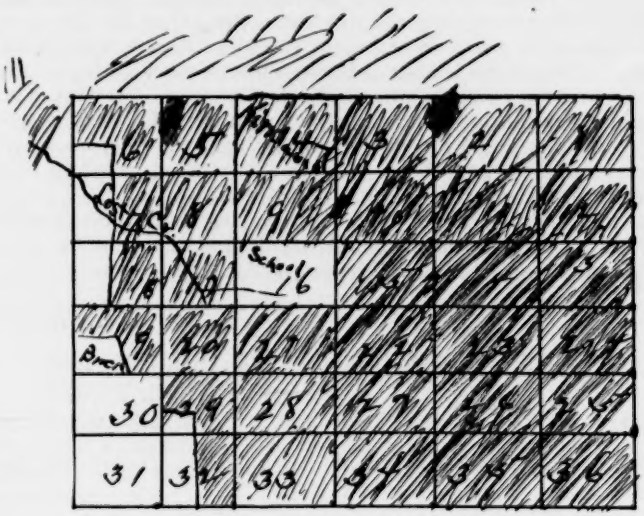
O. W. MILLER.

Subscribed and sworn to before me this 12th of April, 1895.

19 JOHN B. PETTIS,
Dep. Cl'k Dist. Ct.

(The following is approximately a copy of diagram exhibited in the affidavit, the clerk not having been furnished with copy of same for use in this transcript.)

Lands shaded belong to Wetmore & Stevenson.



Town. 2, R. 4 E., Ocoee dist., Polk county, Tenn.

O. W. MILLER.

(Endorsed:) Filed 12th day of Apr., 1895. Henry O. Ewing, deputy clerk.

The defendants' counsel objected to the introduction of these affidavits for the following reasons, to wit:

1. Because affidavits are not admissible after verdict and judgment.

2. Because the value of the matter in dispute appears in the record as made by the parties on trial, and affidavits can only be received where the record is silent as to the question of the value of the matter in dispute.

3. Because, as proof was heard upon the question of value,
20 affidavits should not be looked to when the defendants are not given an opportunity to cross-examine or to produce counter-affidavits.

4. Because the actual market value of the matter in dispute fully appears in the plaintiffs' own evidence, and the market value of the matter in dispute, and not any contingent or prospective value or collateral effect upon other property owned by the plaintiffs and not in dispute, can be considered in determining the question of jurisdiction.

But the court allowed the affidavits to be filed.

Upon consideration of the evidence heard on the trial and of the affidavits produced by plaintiffs' counsel, the court was of opinion that the value of the matter in dispute was less than $2,000, and that there was not at the commencement of the suit and is not now a substantial controversy between the parties of sufficient value to be within the jurisdiction of the court.

The court therefore sustained defendants' motion to dismiss the suit for want of jurisdiction, and judgment was accordingly entered setting aside the verdict and judgment in favor of the plaintiffs, dismissing the suit for want of jurisdiction and rendering judgment for costs against the plaintiffs and the sureties in their prosecution bond.

The plaintiffs excepted to this action of the court and tendered this their bill of exceptions, which was signed, sealed, and made part of the record within the time stipulated by counsel.

This 14th day of May, 1895.

C. D. CLARK, *Judge.*

21 (Endorsed:) Filed May 25, 1895. Henry O. Ewing, deputy clerk.

And afterwards, to wit, on the 13th day of June, A. D. 1895, came the plaintiffs, by their attorney, and filed in the clerk's office of said court a certain petition for writ of error; which said petition for writ of error is clothed in the words and figures following, to wit:

Petition for Writ of Error.

And now comes George Peabody Wetmore *et als.*, plaintiffs herein, and say that on or about the 12th day of April, 1895, this court entered judgment herein in favor of the defendants and against these plaintiffs, in which judgment and the proceedings had prior

thereunto in this cause certain errors were committed, to the prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these plaintiffs pray that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to the said Supreme Court.

CHARLES SEYMOUR,
Att'y for Plaintiffs.

(Endorsed:) Filed June 13, 1895. Henry O. Ewing, deputy clerk.

22 And afterwards, to wit, on the 13th day of June, A. D. 1895, the plaintiffs, by attorney, filed in the clerk's office of said court a certain assignment of errors; which said assignment of errors is clothed in the words and figures following, to wit:

Assignment of Errors.

In this cause, being upon writ of error from the final judgment dismissing suit of complainants for the tract of land described in the declaration, come the complainants, G. P. Wetmore, V. K. Stevenson, Matilda Alloway, Eloise Kernochan, James L. Kernochan, Paul E. Stevenson, and Maxwell Stevenson, by his next friend, Paul E. Stevenson, and say that in the records and proceedings in the within-entitled cause there is manifest error, to their injury and to the injury of each of them, and for cause thereof they assign the following grounds:

I.

The court erred in adjudicating that the value of the land in controversy was less than two thousand dollars, and that it had no jurisdiction of the cause, when it clearly appeared from the proof that the land was worth from two thousand to four thousand dollars as a part of the tract belonging to the plaintiffs and sued for in the declaration, and that it was only when cut off from the remainder of the tract sued for and separated from plaintiffs' land that the 900 acres of land set out in the plea became worth less than two thousand dollars, and when considered with regard to prospective value; and—

23 II.

That the court erred in dismissing the suit for want of jurisdiction.

Wherefore said appellants pray a reversal of said judgment.

CHARLES SEYMOUR,
Att'y for Plaintiff-.

(Endorsed:) Filed June 13, 1895. Henry O. Ewing, deputy clerk.

And afterwards, to wit, on the 13th day of June, A. D. 1895, came the plaintiffs, by their att'y, and filed in the clerk's office of said court a certain bond on writ of error; which said bond on writ of error is clothed in the words and figures following, to wit:

Bond on Writ of Error.

Know all men by these presents that we, George Peabody Wetmore, V. K. Stevenson, Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson Kernochan, James L. Kernochan, and Maxwell Stevenson, as principals, and Charles Seymour, as security, are held and firmly bound unto the defendants, David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell, in the full and just sum of five hundred dollars, to be paid to the said defendants, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly, to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

24 Whereas lately, at a circuit court of the United States for the southern division of the eastern district of Tennessee, in a suit depending in said court between George Peabody Wetmore *et al.*, plaintiffs, and David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell, defendants, a judgment was rendered against the said George P. Wetmore *et al.*, and the said George P. Wetmore *et al.* having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell, citing and admonishing *him* to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October, 1895:

Now, the condition of the above obligation is such that if the said George P. Wetmore *et al.* shall prosecute said writ of error to effect and answer all damages and costs if *he* fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE PEABODY WETMORE. [SEAL.]
V. K. STEVENSON. [SEAL.]
MATILDA C. ALLOWAY. [SEAL.]
HUGH STEVENSON. [SEAL.]
PAUL E. STEVENSON. [SEAL.]
ELOISE STEVENSON KERNOCHAN. [SEAL.]
MAXWELL STEVENSON, [SEAL.]
Next Friend, Paul E. Stevenson,
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR. [SEAL.]

Approved:
C. D. CLARK, *Judge.*

25 (Endorsed:) Filed June 13, 1895. Henry O. Ewing, deputy clerk.

26 *Writ of Error.*

Supreme Court of the United States.

UNITED STATES OF AMERICA:

The President of the United States to the honorable judge of the circuit court of the United States for the southern division of the eastern district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between George Peabody Wetmore *et al.*, plaintiffs, and David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell, defendants, a manifest error hath happened, to the great damage of the said George P. Wetmore *et al.*, plaintiffs, as by their complaint appears, we, being willing that error, if any hath been made, should be duly corrected and full and speedy justice done to the parties aforesaid in their behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the 12th day of July next *next*, in the said Supreme Court of the United States to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

27 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of June, in the year of our Lord one thousand eight hundred and ninety-five, and the Independence of the United States of America the one hundred and nineteenth.

HENRY O. EWING,
Deputy Clerk.

Allowed:
C. D. CLARK, *Judge.*

In obedience to this writ transcript of the record is herewith tendered.

HENRY O. EWING,
Deputy Clerk.

[Endorsed:] No. 419. In the U. S. circuit court at Chattanooga. George Peabody Wetmore *et al.* against David Rymer *et al.* Writ of error.

28 *Citation.*

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

To David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, on the 12 day of July next, pursuant to a writ of error filed in the clerk's office of the circuit court for the southern division of the eastern district of Tennessee, at Chattanooga, wherein George Peabody Wetmore *et al.* are plaintiffs in error and you defendants in error, to show cause, if any there be, why the judgment rendered against these said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-five, and the Independence of the United States of America the one hundred and nineteenth.

CHAS. D. CLARK, *Judge.*

I hereby this — day of June, 1895, accept due personal service of this citation on behalf of David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell.

(See reverse side this page.)

28½ Service acknowledged this June 17, 1895.

PRITCHARD, SIZER & BIBLE,
For David Rymer.

29 UNITED STATES OF AMERICA, } *ss:*
Southern Division of the Eastern District of Tennessee, }

I, H. H. Taylor, clerk of the circuit court of the United States for the district and division aforesaid, do hereby certify the above and foregoing to be a full, true, and complete transcript of the proceedings had by and before said court in the cause of George Peabody Wetmore *et al. vs.* David Rymer *et al.*, No. 419 in said court, as the same appears of record and on file in the clerk's office of said court.

The Seal of the United States Circuit Court, District of East Tenn., Southern Div'n.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chattanooga, Tennessee, this 21st day of June, A. D. 1895.

H. H. TAYLOR, *Clerk,*
By HENRY O. EWING,
Deputy Clerk.

Endorsed on cover: Case No. 16,076. E. Tennessee C. C. U. S. Term No., 367. George P. Wetmore *et al.*, plaintiffs in error, *vs.* David Rymer, Sam. Rymer, Tom Payne, and W. Cal. McConnell. Filed October 24, 1895.